

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:)	
Yuest, Daniel T.)	Atty Docket: 30130-RA
)	
Serial No.: 10/644,138)	Examiner: Figueroa, Felix O.
)	
Filed: August 20, 2003)	Group Art: 2833
)	
For: POWER CORD PLUG SECURING DEVICE)	Technology Center 2800

March 28, 2006

APPLICANT'S REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Examiner's Answer in the above-referenced application, having a mailing date of 15 March 2007, Applicant respectfully and timely submits this Reply Brief to the Board of Patent Appeals and Interferences.

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being electronically filed with the United States Patent and Trademark Office Private PAIR/EFS addressed to the Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450:

Barry E. Kaplan
(Name of Person Mailing)

/Barry E. Kaplan/
(Signature of Person Mailing)

May 11, 2007
(Date)

ARGUMENTS

Claims 1 and 10, "substantially inflexible"

With regard to the rejection of claim 1, the Examiner stated, at page 8 of the Examiner's Answer, that "the fact that the connector/clasp block may be bent apart does not preclude it from being 'essentially inflexible.'" Applicant respectfully submits that the Examiner's articulated position, specifically, that "essentially inflexible" means flexible, is not only unreasonable, but is manifestly repugnant to the rules of claim construction. Thus, inasmuch as the Examiner admits that the connector of Grosswendt may be bent apart, the only reasonable conclusion is that Grosswendt fails to teach an essentially inflexible clasp block member.

In support for his erroneous conclusion, the Examiner stated, also at page 8, that "Grosswendt discloses that the first connector/clasp block (20) is 'substantially inflexible' (col. 2, line 3-4)." Applicant respectfully submits that the Examiner's reliance on the cited portion of Grosswendt is misplaced because the term "substantially inflexible" is not used to describe the connector itself, but rather to describe device as a whole. Specifically, Grosswendt states that the term "substantially inflexible," as defined at col. 5, lines 16-31 of Grosswendt, means:

"that the first connector 20 will tend not to stretch or to bend out of the reference plane when a force is applied to each connector 20, 22, and 24 through the cord or member inserted into its central opening 38. However, it is understood that each connector 20, 22, and 24 retains enough flexibility and/or elasticity such that the opposing teeth 54 and 56 can be separated sufficiently to allow the cord or member to pass through each access notch 40 into the central opening 38 when manual force is applied to the opposing teeth 54 and 56 perpendicular to the reference plane during insertion and removal of the cord or member into and out of each central opening 38" (Emphasis added).

The connector itself is explicitly described as flexible, and it is only the construct of all three connectors, assembled together with the connecting strips, that gives the device its inflexible character for retaining plugs 12 and 16 in mutual engagement when a separation force is applied, such as a tension force applied through the cords. Thus, the term “substantially inflexible” is clearly directed to the device 10 overall, and not specifically to the connector, and any reliance on such teaching to support the Examiner’s conclusion that the connector is inflexible is inappropriate and misinterprets the teaching of Grosswendt. Consequently, Grosswendt fails to teach the “essentially inflexible clasp block member¹” of Applicant’s claimed invention at least because Applicant’s claimed invention is essentially inflexible, i.e. Applicant’s clasp block member is not flexible or elastic, while the connector of Grosswendt is flexible and/or elastic.

Claims 1 and 10, “open region”

With regard to the rejection of claim 1, the Examiner stated, at page 9 of the Examiner’s Answer, that “Grosswendt shows (in Fig. 1) an open region disposed opposite the truncated cylindrical bottom portion (at least when the cable is in the cylindrical bottom portion).” Applicant respectfully submits that Fig. 1 of Grosswendt does not show any opening on connector 20 (cited by the Examiner as the essentially inflexible clasp block

¹ It is respectfully noted that Applicant’s claims additionally include a limitation directed to a “block member” that is not shown by Grosswendt, or by any reference of record. The structure of Grosswendt is most accurately described as a thin member, its thinness in keeping with the purpose of allowing separation of teeth 54, 56 in the manner stated; to wit, that each connector, “retains enough flexibility and/or elasticity such that the opposing teeth 54 and 56 can be separated sufficiently to allow the cord or member to pass through each access notch 40 into the central opening 38 when manual force is applied” Applicant’s “block member”, by contrast, structurally provides the “essentially inflexible” limitation of the referenced claims; thereby, negating the “flexibility” expressly taught as desirable by Grosswendt. The purpose and benefit of Applicant’s “essentially inflexible block member” is to avoid relative displacement of the sides of the connector with respect to the axial plane of the conductor that is disadvantageous in Grosswendt.

member of Applicant's invention). To the extent that Fig. 1 shows connector 22 having an opening when cord 18 is disposed therein, such opening is not clearly recited in the written description, and may thus be an anomaly of the illustration. Furthermore, even if such opening is intended to be part of Grosswendt's plug securing device, the opening can only be the result of the flexibility thereof, because as is made clear in Figs. 2 and 5-7, the opposing teeth of each connector are disposed in abutting relationship when the connectors are not flexed. *See also* Col. 4, lines 55-63. Thus, the Examiner's statement that Grosswendt teaches an opening, at least when the cord is disposed within the connector, is incorrect. Instead, Grosswendt teaches a completely enclosed rectangular inner space, without an opening, save an opening that may be created by bending or flexing the connector.

The Examiner further stated that Applicant stated, at page 6 of the Appeal Brief, that "the region of Grosswendt must be open in order to receive the cable." Applicant respectfully submits that Applicant made no such statement. Furthermore, Applicant respectfully submits that such statement, wrongly attributed to Applicant by the Examiner, is false. Specifically, the connector of Grosswendt need not be "open" (or have an opening as claimed) in order to receive the cord because the connector of Grosswendt merely includes a slit, whereby flexion of the connector allows the cord to pass therethrough. In contrast, the claimed opening is not formed by flexion, but is defined by the shape of the essentially inflexible clasp block member of Applicant's claimed invention.

Claims 1 and 10, non-analogous art

Despite the Examiner's assertion to the contrary, Applicant respectfully maintains that Tuttle is non-analogous art, at least because it is directed to a vehicle exhaust support

structure, while the present invention is directed to an electrical plug retaining device. Applicant admits that he has not invented, in the abstract, the strap, or the hole, or even the strap with a hole, and, accordingly, Applicant has refrained from claiming such structure alone. The securing strap of Applicant's claimed invention, however, is not taught by the exhaust hanging strap of Tuttle. Surely, if the securing strap of the claimed invention is known, as the Examiner asserts, there must be better evidence of such knowledge than the exhaust hanging strap of Tuttle.

Claims 3 and 15, "U-shaped"

With regard to the rejection of claim 3, the Examiner stated, at page 10 of the Examiner's Answer, that Grosswendt teaches a U-shaped clasp block member, as shown in the annotated version of Fig. 7 reproduced at page 10 of the Examiner's Answer. Applicant respectfully submits that the Examiner's interpretation of the teaching of Fig. 7 is arbitrary, the result of impermissible hindsight, and, therefore, unreasonable. Specifically, there is no teaching in Grosswendt of a U-shaped connector. Instead, Grosswendt teaches, at Col. 3, lines 62-68, that connector 20 is rectangular, or alternatively round, oval, square, or irregular. In all cases, connector 20 is not U-shaped at least because teeth 54 and 56 meet at point 62, thus completely enclosing inner space 60. *See* col. 4, lines 55-63. The only teaching of a U-shaped clasp block member is found in Applicant's own disclosure, leaving only the conclusion that the Examiner's adoption of the arbitrary, albeit creative, interpretation of the connector of Grosswendt illustrated at page 10 of the Examiner's Answer resulted from the use of impermissible hindsight.

With regard to the Examiner's statement that the features upon which Applicant relied are not recited in the claims, and that the limitations of the specification are not read into the claim, Applicant respectfully points out that the features argued are recited in the claim. Specifically, that the essentially inflexible clasp block member is substantially U-shaped is explicitly recited in claim 3. Thus, Applicant's arguments as to the meaning of the claim language does not require additional limitations to be read into the claim, but are merely directed to the appropriate interpretation of the explicitly recited claim limitations. Thus, Applicant's arguments are appropriate, and consideration thereof is respectfully requested.

As to the Examiner's statement, at page 11, that the features do not have "enough basis in the specification as originally filed", Applicant respectfully submits that textual support is found in numerous instances in Applicant's specification as originally filed, such as at page 16 of the originally filed specification, and that Applicant's disclosure with regard to the claimed U-shaped clasp block member meets all applicable requirements, including those of enablement, definiteness, and best mode.

Claims 5 and 17, "textured or ribbed retaining walls"

With regard to the rejection of claim 5, the Examiner stated, at page 11 of the Examiner's Answer, that Fig. 2 of Cross shows a trough region with textured or ribbed retaining walls, Applicant respectfully submits that Fig. 2 of Cross fails to show a trough region as claimed, i.e. a trough region of an essentially inflexible clasp block member having textured retaining walls disposed vertically above a truncated cylindrical bottom.

Specifically, Cross fails to show any textured retaining walls of any kind, let alone textured retaining walls of a trough of an essentially inflexible clasp block member.

The Examiner further stated that Applicant's cited argument failed to deny "the trough region [of Cross] being textured / ribbed." The Examiner failed, however, to quote the immediately preceding sentence of Applicant's Appeal Brief, wherein Applicant stated "that Cross fails to disclose a trough region or retaining walls as required by claims 1, 2 and 4, wherein at least one of the trough region and the retaining walls are at least partially textured or ribbed for increased frictional association with the power cord." See page 9, lines 1-4. Thus Applicant has not admitted, or failed to deny, that Cross fails to teach the claimed ribbed or textured retaining walls at least because it is not true. The cited shoulders of Cross do not meet the claim limitations at least because 1) they are not retaining walls at all, but are instead pinching means, 2) they are not essentially inflexible, and 3) they are not part of a trough and, thus, are not disposed above a bottom thereof. Cross no more teaches Applicant's claimed textured or ribbed retaining walls than does a reference that teaches sand paper, or any other textured or ribbed surface. The Examiner, yet again, relies on impermissible hindsight and piecemeal reconstruction of Applicant's claimed invention without considering the relationship of the numerous elements.

Finally, the Examiner stated, at page 12, that "one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references." Applicant respectfully submits that the proposed combination of references is nothing more than the result of a cobbling-together of dissected pieces of references. As such, Applicant has endeavored to illustrate, through the arguments presented in the Appeal

Brief, like those of the Office Action responses, that the claimed elements are simply not shown by any of the individual references, and, thus, the Examiner has failed to meet the burden of establishing where each and every claimed limitation is taught in the prior art, required for establishing a *prima facie* case of obviousness according to the express mandates of the Statute. Specifically, Applicant has attacked the individual references only to the extent necessary to show that they do not, in fact, reasonably teach the elements for which they are cited by the Examiner.

Additionally, it is respectfully noted that this is not a case implicating the obviousness standard of explicit “teaching, suggestion, or motivation” to combine, recently modified by the United States Supreme Court in *KSR International Co. v. Teleflex Inc.*, No. 04-1350 (April 30, 2007). Rather, the determinative standard applicable to this appeal is statutory. The Examiner has failed to cite references that teach each and every claimed element of Applicant’s device; accordingly, simply put, the Section 103 rejections are inappropriate in this case.

CONCLUSION

Applicant respectfully submits that the rejection of claims 1-23, made final in the Office Action dated March 31, 2006, should be reversed at least for the reasons stated above. Allowance of claims 1-23 is, therefore, respectfully requested.

Respectfully submitted this 11th day of May, 2007.

/Barry E. Kaplan/
Barry E. Kaplan, Esq.
Attorney for Applicant
Reg. No. 38,934

Myers & Kaplan,
Intellectual Property Law, L.L.C.
1899 Powers Ferry Road
Suite 310
Atlanta, GA 30339
Phone: 770-541-7444
Fax: 770-541-7448
E-mail: bkaplan@mkiplaw.com